

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION**

NATIONAL ELITE
TRANSPORTATION, LLC, a
Delaware limited liability
company,

Plaintiff,

vs.

ANGEL FOOD MINISTRIES,
INC., a Georgia corporation, and
WESLEY JOSEPH WINGO,

Defendants.

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Civil Action File No. 3:11-cv-41

PROPOSED SCHEDULING AND DISCOVERY ORDER

In accordance with this Court's Federal Rule of Civil Procedure 16 and 26 Order dated April 19, 2011, the parties to this action, through counsel, have conferred and jointly developed a scheduling order and discovery plan containing deadlines and limitations as follows:

I. Nature of the Case:

This is a breach of contract and tort case brought by the Plaintiff against the Defendants for non-payment under a Rate Savings Incentive Compensation clause contained in a contract between National Elite Transportation, LLC and Angel Food Ministries, Inc. Plaintiff contends that the Defendants owe it approximately \$1,000,000.00 for services performed by the Plaintiff for the Defendants in

negotiating lower shipment rates for the benefit of the Defendants under the agreed-upon Rate Savings Incentive Compensation provision. Defendants deny liability as to all claims and have filed a Motion to Dismiss for Failure to State a Claim upon Which Relief may be Granted with respect to Counts II through V. Defendant Angel Food Ministries, Inc. anticipates filing a counterclaim.

II. Counsel of Record

The following individually named attorneys are hereby designated as lead counsel for the parties:

For the Plaintiff:

Brian J. Duva
Mozley, Finlayson & Loggins, LLP
One Premier Plaza; Suite 900
5605 Glenridge Drive
Atlanta, Georgia 30342
404.256.0700 (telephone)
404.250.9355 (facsimile)
bduva@mflaw.com

For Defendants Angel Food Ministries and Wesley Joseph Wingo:

John E. Hall
Hall Booth Smith & Slover, P.C.
191 Peachtree Street, N.E.
Suite 2900
Atlanta, Georgia 30303
404.954.6929 (telephone)
404.954.5020 (facsimile)
JHall@hbss.net

III. Complaint and Answer Filing Dates:

Complaint: March 14, 2011

Defendants' Motion to Dismiss for Failure to State a Claim upon Which Relief may be Granted: April 5, 2011

IV. Discovery Deadlines:

A. Time for Discovery:

The time for discovery in this case shall expire on October 5, 2011, that being no more than six months after the filing of the Defendants' Partial Motion to Dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(6).

In the event that one or all parties believe that a greater time for discovery is needed, the party or parties will file a written motion for extension of time, accompanied by a proposed order for the court, wherein good cause will be shown for the requested extension.

B. Witnesses to be Deposed

<u>Deponent</u>	<u>Date</u>	<u>Location</u>
Corporate Representative of Angel Food Ministries, Inc.	July 2011	Athens, GA
Wesley Joseph Wingo	July 2011	Athens, GA
Mike Benton	July 2011	Athens, GA
David Ward	July 2011	Athens, GA
Casey Barts	July 2011	Athens, GA
Daniel Hudson	July 2011	Atlanta, GA

Michelle Demattei	July 2011	Atlanta, GA
Susan Ingram	July 2011	Atlanta, GA
Dennis Baxter	July 2011	Atlanta, GA
Stephanie Jimenez	July 2011	Atlanta, GA
Libby Jones	July 2011	Atlanta, GA
Karen Swearengen	July 2011	Atlanta, GA
Pamela Dorsey	July 2011	Atlanta, GA
Dick Rees	July 2011	Atlanta, GA
Machelle Lindsay	July 2011	TBD
David Smallridge	July 2011	Atlanta, GA
Tony Prather	July 2011	Athens, GA
Corporate Representative of National Curriers Inc./National Elite Transportation, LLC	July 2011	TBD
Expert Witnesses (if any)	August 2011	TBD
Additional Witnesses Disclosed during Discovery	Aug-Sept 2011	TBD

C. Expert Witnesses (if applicable)

1. Designation of Experts

Any party who desires to use the testimony of an expert witness will be required to designate the expert according to the following

schedule: Plaintiff must disclose the identity of any expert witness on or before August 1, 2011.

Defendant must thereafter disclose the identify of any expert witnesses that may testify on or before August 15, 2011.

In the event Defendant designates an expert where Plaintiff has not previously designated an expert, Plaintiff shall have an additional fifteen (15) days to designate a rebuttal expert.

2. Expert Reports

Any disclosure or designation of an expert witness must be accompanied by a written report prepared and signed by the expert in accordance with the requirements of Federal Rule of Civil Procedure 25(a)(2)(B).

3. Daubert Motions

Any Daubert motions must be filed within sixty (60) days of the close of the discovery period in this case.

D. Discovery Limitations or Need for Protective Order

At this time, no discovery limitations are known.

E. Motion to Compel Discovery

While written motions to compel discovery may be properly filed, the Court requests that the parties initially refrain from filing such motions and

instead contact Lee Anne Purvis, Courtroom Deputy (478.752.0739) to schedule a telephone conference to discuss any discovery issues.

F. Estimated Cost of Discovery

For Plaintiff: Unknown at this time but anticipated costs of discovery are between \$100,000 and \$200,000.

For Defendants: Unknown at this time but anticipated costs of discovery are between \$100,000 and \$200,000.

V. Time for Filing Motions:

A. Motions to Amend the Pleadings or to Join Parties

All motions seeking to amend the pleadings or to join parties or claims to the current action shall be filed on or before August 15, 2011.

B. Dispositive Motions

The parties agree that all dispositive motions will be filed no later than December 5, 2011, that being no more than sixty (60) days after the expiration of discovery in this case. In the event one or all the parties would like to request oral argument on a pending motion for summary judgment, a separate motion requesting oral argument will be filed in accordance with Local Rule 7.5.

VI. Certification of the Parties:

The parties certify by their signatures below that they have conferred and discussed the nature and basis of their claims and defenses and the possibilities for prompt settlement or resolution of the case, pursuant to Local Rule 26(e).

This 3rd day of June, 2011.

/s/ Brian J. Duva

Brian J. Duva
Mozley, Finlayson & Loggins, LLP
*Counsel for National Elite
Transportation, LLC*

/s/ Malcolm C. McArthur

Malcolm C. McArthur
Hall, Booth, Smith & Slover, P.C.
*Counsel for Angel Food Ministries, Inc.
and Wesley Joe Wingo*

The Court, having reviewed the information contained in the Proposed Scheduling and Discovery Order completed and filed jointly by the parties to this action, hereby **ADOPTS** the parties' plan and **MAKES IT THE ORDER OF THE COURT.**

SO ORDERED this 7th of June, 2011.

S/ C. Ashley Royal
C. ASHLEY ROYAL
United States District Judge